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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: CASE NO. 05-60023

Tyler Donnell Taylor and Coletta Evette Taylor,

Debtor. CHAPTER 7
JUDGE MASSEY

Anthony Williams,

Plaintiff,

v.

ADVERSARY NO. 05-9140

Tyler Donnell Taylor, Coletta Evette Taylor and
Option One Mortgage Corp.,

Defendants.

**ORDER DISMISSING ADVERSARY PROCEEDING AND DENYING MOTION OF
OPTION ONE MORTGAGE CORP. FOR SUMMARY JUDGMENT AS MOOT**

Anthony Williams ("Plaintiff") brings this adversary proceeding against Tyler Donnell Taylor and Coletta Evette Taylor, who are Debtors in the above-referenced bankruptcy case, and Option One Mortgage Corp. for a declaratory judgment that Plaintiff's judgment lien has priority over a consensual lien on the Taylors' residence at 3113 Gus Robinson Road, Powder Springs, Cobb County, Georgia (the "Property") held by Option One. The docket does not reflect service of the complaint on Debtors, and they have not responded to it. The complaint seeks no relief against them apart from the relief sought against Option One. Option One filed an answer and then a motion for summary judgment.

On or about May 18, 1998, Debtors borrowed \$124,000 from EquiCredit Corporation of Georgia secured by a security deed on the Property, which was duly recorded. On August 5, 2002, Plaintiff obtained a judgment of \$305,025 against Tyler Donnell Taylor, which he recorded on the General Execution Docket in the Office of the Clerk of the Cobb County Superior Court on September 5, 2002. On September 26, 2003, Debtors refinanced their home with Defendant Option One to which they delivered a security deed to secure a debt of \$150,000.

Debtors filed a voluntary Chapter 13 petition on January 1, 2005. The case was converted to Chapter 7 on June 13, 2005. On their Schedule C and two amendments thereto, the last one having been filed on April 25, 2005, Debtors exempted the Property. No one filed an objection to the exemption of the Property. The Chapter 7 Trustee filed a No Distribution Report on September 23, 2005. The Chapter 7 case has now been closed.

Plaintiff contends that Debtors "abscond[ed] with approximately \$25,000 of value from real property" by refinancing their debt on the Property and that his lien, having preceded the refinancing, is entitled to priority over Option One's security deed. Option One disputes Plaintiff's contentions and asserts that its lien is entitled to the first priority position under the doctrine of equitable subrogation, citing *Davis v. Johnson*, 241 Ga. 436, 438, 246 S.E.2d 297, 299 (Ga. 1978). The Court cannot decide this issue because it lacks jurisdiction to do so.

This Court is obligated to inquire into subject-matter jurisdiction sua sponte whenever that jurisdiction may be lacking. *Univ. of S. Ala. v. The Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). Jurisdiction over bankruptcy cases is set out in section 1334 of title 28 of the U.S. Code, which provides in relevant part as follows:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

District courts may refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges for that district.

28 U.S.C. § 157(a).

The Eleventh Circuit defines "arising under" jurisdiction to cover matters invoking substantive rights under the Bankruptcy Code. *Cont'l Nat'l Bank of Miami v. Sanchez (In Re: Toledo)*, 170 F.3d 1340, 1345 (11th Cir. 1999). The Eleventh Circuit defines "arising in" jurisdiction to cover matters that could only arise in bankruptcy. *Id.* This adversary proceeding is not a case under title 11. It is a civil proceeding, but not one arising under title 11, because the issue presented is the priority of liens, which is governed in this instance solely by state law. Nor does the proceeding arise in a case under title 11 because the facts giving rise to the dispute existed prior to the date on which the Taylors filed their petition.

The only remaining jurisdictional hook in 28 U.S.C. § 1334 is for proceedings "related to" a case under title 11. In defining the "related to" grant of jurisdiction, the Eleventh Circuit has adopted the methodology of *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3rd Cir. 1984). *Miller v. Kemira (In Re: Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990). The *Pacor* test holds that any proceeding which could conceivably have an effect on an estate being administered in bankruptcy is "related to a case under title 11". *Id.* See also *Cont'l Nat'l Bank of Miami v. Sanchez, supra*. Proceedings related to bankruptcy are not limited, however, to those against the

debtor, the estate, or the debtor's property. *In re Lemco Gypsum*, 910 F.2d at 788. But a matter is related to a bankruptcy case within the meaning of section 1334(b) only if "the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.*

This Court lacks subject-matter jurisdiction to decide the dispute framed by Plaintiff's complaint because this adversary proceeding is not sufficiently related to the bankruptcy case of the Taylors. The Property in Cobb County is no longer property of the estate. The effect of the exemption taken by Debtors was to "exempt from property of the estate the property listed" in Debtors' Schedule C, as amended. 11 U.S.C. § 522(b). Hence, a judgment declaring the priority of the liens held by Plaintiff and by Option One cannot possibly affect the bankruptcy estate. Nor does it affect the rights of Debtors or their respective liabilities or their options or freedom of action insofar as the bankruptcy case and their discharges are concerned. They have not sought to avoid the judgment lien, which presumably continues to attach to the Property. It follows that the relative priority of Plaintiff's judgment lien and Option One's security deed is immaterial to the bankruptcy proceeding and to the Debtors. If Plaintiff wishes to pursue his claim against Option One, he must do so in state court.

Accordingly it is

ORDERED that this adversary proceeding is DISMISSED for lack of subject matter jurisdiction and Defendant Option One Mortgage Corp.'s motion for summary judgment is DENIED as moot.

Dated: May 3, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE